

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOSEPH CASTILLO,

§

Plaintiff,

§

vs.

C.A. No. 5:23-cv-200

BIG DIAMOND LLC,

a limited liability company

§

§

§

Defendant.

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§

DEFENDANT'S ORIGINAL ANSWER AND DEFENSES

COMES NOW Defendant Big Diamond LLC, and in answer to Plaintiff Joseph Castillo's ("Plaintiff") Complaint ("Plaintiff's Original Complaint") filed in this action, states as follows, the paragraphs being numbered to correspond to the numbering of the Complaint:

PRELIMINARY STATEMENT

1. Denied.

2. Defendant denies that Defendant has violated the ADA or that it created real and significant barriers to entry for disabled persons. The remaining allegations do not require admission or denial. Defendant denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities or that Defendant is in violation of any state and federal laws.

JURISDICTION

3. Defendant admits that Plaintiff brings claims pursuant to Title III of the ADA. Defendant denies the remaining allegations. Defendant denies that Plaintiff is entitled to any relief on his claims in this case. Defendant further denies that the property in question contains any

inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities or that Defendant is in violation of any state and federal laws.

4. Defendant admits that venue is proper in this Court and the property in question is located in and does business within this judicial district, but denies that Plaintiff is entitled to any relief on his claims in this case. Defendant denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, and/or that Defendant is in violation of any state and federal laws including, but not limited to, the ADA.

PARTIES

5. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 5 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

6. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 6 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

7. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 7 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

8. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 8 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

9. Admitted.

FACTUAL ALLEGATIONS

10. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 10 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

11. Admitted.

12. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 12 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

13. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 13 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

14. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 14 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

15. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 15 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.

16. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 16 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations. Defendant further denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, including Plaintiff, if applicable, or that Defendant is in violation of any state and federal laws, including,

but not limited to, the ADA. Defendant further denies that Plaintiff has suffered any legally cognizable injury in this case.

17. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 17 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations. Defendant further denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, including Plaintiff, if applicable, or that Defendant is in violation of any state and federal laws, including, but not limited to, the ADA. Defendant further denies that Plaintiff has suffered any legally cognizable injury in this case.

18. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 18 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations. Defendant further denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, including Plaintiff, if applicable, or that Defendant is in violation of any state and federal laws, including, but not limited to, the ADA.

19. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 19 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations. Defendant further denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, including Plaintiff, if applicable, or that Defendant is in violation of any state and federal laws, including, but not limited to, the ADA. Defendant further denies that Plaintiff has suffered or will continue to suffer any legally cognizable injury in this case.

20. Admitted Plaintiff has rights under the ADA. Defendant denies the remaining allegations.

21. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 21 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations. Defendant further denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, including Plaintiff, if applicable, or that Defendant is in violation of any state and federal laws, including, but not limited to, the ADA. Defendant further denies that Plaintiff has suffered any legally cognizable injury in this case.

22. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 22 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations. Defendant further denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, including Plaintiff, if applicable, or that Defendant is in violation of any state and federal laws, including, but not limited to, the ADA. Defendant further denies that Plaintiff has suffered or will continue to suffer any legally cognizable injury in this case.

23. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 23 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations. Defendant further denies that the property in question contains any inappropriate physical barriers and/or is not accessible to individuals with mobility disabilities, including Plaintiff, if applicable, or that Defendant is in violation of any state and federal laws, including, but not limited to, the ADA. Defendant further denies that Plaintiff has suffered or will continue to suffer any legally cognizable injury in this case.

COUNT I – CLAIM FOR INJUNCTIVE RELIEF
(Against Defendant for ADA Violations)

With respect to the allegations contained in paragraphs 1 through 23 of Plaintiff's Original Complaint, Defendant incorporates by reference its responses to the foregoing paragraphs of Plaintiff's Original Complaint as if fully stated herein.

24. The allegations contained in paragraph 24 of Plaintiff's Original Complaint are recitations of the law; therefore, no response is necessary. To the extent a response is required, Defendant denies the allegations.

25. The allegations contained in paragraph 25 of Plaintiff's Original Complaint are recitations of the law; therefore, no response is necessary. To the extent a response is required, Defendant denies the allegations.

26. The allegations contained in paragraph 26 of Plaintiff's Original Complaint are recitations of the law; therefore, no response is necessary. To the extent a response is required, Defendant denies the allegations.

27. The allegations contained in paragraph 27 of Plaintiff's Original Complaint are recitations of the law; therefore, no response is necessary. To the extent a response is required, Defendant denies the allegations.

28. Defendant denies the allegations in paragraph 28 of Plaintiff's Original Complaint.

29. Defendant denies the allegations in paragraph 29 of Plaintiff's Original Complaint.

30. Defendant denies the allegations in paragraph 30 of Plaintiff's Original Complaint.

31. Defendant denies the allegations in paragraph 31 of Plaintiff's Original Complaint.

32. Defendant denies the allegations in paragraph 32 of Plaintiff's Original Complaint.

33. Defendant denies the allegations in paragraph 33a-m of Plaintiff's Original Complaint.
34. Defendant denies the allegations in paragraph 34 of Plaintiff's Original Complaint.
35. Defendant denies the allegations in paragraph 35 of Plaintiff's Original Complaint.
36. Defendant is without sufficient knowledge to admit or deny the allegations contained in paragraph 36 of Plaintiff's Original Complaint; therefore, Defendant denies the allegations.
37. Defendant denies the allegations in paragraph 37 of Plaintiff's Original Complaint.
38. Defendant denies the allegations in paragraph 38 of Plaintiff's Original Complaint.
39. Defendant denies the allegations in paragraph 39 of Plaintiff's Original Complaint.
40. Defendant denies the allegations in paragraph 40 of Plaintiff's Original Complaint.
41. The allegations contained in paragraph 41 of Plaintiff's Original Complaint are recitations of the law; therefore, no response is necessary. To the extent a response is required, Defendant denies the allegations.
42. Defendant denies the allegations in paragraph 42 of Plaintiff's Original Complaint.
43. Defendant denies the allegations in paragraph 43 of Plaintiff's Original Complaint.
44. The allegations contained in paragraph 44 of Plaintiff's Original Complaint are recitations of the law; therefore, no response is necessary. To the extent a response is required, Defendant denies the allegations.
45. Defendant denies the allegations in paragraph 45 of Plaintiff's Original Complaint.
46. Defendant denies the allegations in paragraph 46 of Plaintiff's Original Complaint.

47. Defendant admits that attorney's fees are recoverable under the statutes plead in this action but denies that Plaintiff is entitled to any relief in this case – whether injunctive, damages, attorney's fees or otherwise.

48. Defendant admits that injunctive relief is a remedy under the statutes plead in this action but denies that Plaintiff is entitled to any relief in this case – whether injunctive, damages, attorney's fees or otherwise. Defendant denies the remaining allegations in paragraph 48 of Plaintiff's Original Complaint.

Defendant denies that Plaintiff is entitled to the relief requested in the "Prayer" paragraph of Plaintiff's Original Complaint, including subparagraphs A through H.

Defendant further denies any and all remaining allegations in Plaintiff's Original Complaint to the extent they are not expressly admitted above.

DEFENSES AND AFFIRMATIVE DEFENSES

Without assuming or accepting any burden of proof that would otherwise lie with Plaintiff, Defendant pleads the following:

1. Plaintiff's claims are barred because Plaintiff lacks standing to any relief.
2. Defendant denies that Plaintiff was excluded from any benefit or service of a public entity, because of any disability or otherwise.
3. Defendant would show that the Title III and the ADAAG regulations and standards are not applicable to the facility at issue in this lawsuit.
4. Plaintiff's claims are barred on the ground and to the extent that Plaintiff has suffered no injury in fact with respect to the facts alleged in the Original Complaint.
5. Plaintiff's prayer for injunctive relief is moot and/or will be by the time this matter is adjudicated.

6. Plaintiff's claims are barred to the extent the alleged violations of law are excused or justified under the statutes under which Plaintiff has sued.

7. Defendant is not obligated to remove the barriers alleged in the Complaint to the extent that the structures at issue were constructed and/or modified before the effective date of any law or regulation prohibiting the existence of any such alleged barrier.

8. Defendant is not obligated to remove the barriers alleged in the Original Complaint to the extent that the structure at issue was constructed and/or modified before the effective date of any law or regulation prohibiting the existence of any such alleged barrier.

9. Plaintiff's claims are barred on the ground and to the extent that removal of the alleged barriers to access is not readily achievable.

10. Plaintiff's claims are barred on the ground and to the extent that the obligations existing under Title III of the ADA are excused or do not apply because compliance is not reasonable, compliance would cause an undue burden, and/or compliance is not technically feasible.

11. Plaintiff's claims are barred by the doctrine of unclean hands by reason of Plaintiff's conduct and actions.

12. Plaintiff's claims for relief are barred on the ground that it is and/or would have been structurally impracticable to remove the architectural barriers that are alleged in the Original Complaint or to build the facility without such alleged architectural barriers.

13. Plaintiff is not entitled to recover attorneys' fees for failure to satisfy the necessary elements of prevailing on a claim for attorneys' fees under the statutes alleged.

14. Plaintiff is not entitled to recover on his claims because Defendant has completely or substantially complied with all applicable requirements.

15. The Complaint, including any purported claim for relief alleged in the Complaint, is barred because any and all alterations to the facility identified in the Complaint were made to ensure that the facility would be accessible to the maximum extent feasible.

16. Defendant reserves the right to plead additional defenses as such become evident and available during the course of discovery in this case.

PRAAYER

WHEREFORE, Defendant requests that Plaintiff take nothing by this action, that Plaintiff's Original Complaint be dismissed with prejudice, and that Defendant be awarded such other relief that the Court may deem as proper and just.

Respectfully Submitted,

CLARK HILL STRASBURGER
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that on the 6th of April 2023, a true and correct copy of the foregoing document was delivered via ECF Notification to:

Duncan Strickland
13423 Blanco Road
San Antonio, TX 78216
Duncan@StricklandLawFirm.com
ATTORNEYS FOR PLAINTIFF

Soña Ramirez
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